

Supreme Court, U.S.
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No. 97-873
CLERK

(4)
In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

ALOYZAS BALSYS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED: NOVEMBER 24, 1997
CERTIORARI GRANTED: JANUARY 16, 1998

611P

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages of the printed appendix to the petition for a writ of certiorari:

District court's memorandum and order on United States' motion to enforce administrative subpoena (March 5, 1996)	53a
Opinion of court of appeals (July 15, 1997)	1a
Court of appeals' order denying rehearing and re-hearing en banc (Sept. 25, 1997)	51a

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

No. 93 Misc. 227(SJ)

UNITED STATES OF AMERICA, PETITIONER
v.

ALOYZAS BALSYS

DOCKET ENTRIES

- | | |
|------------|---|
| 11/16/93 1 | MOTION by United States To Enforce Administrative Subpoena (dg) [Entry date 11/19/93] |
| 11/16/93 2 | MEMORANDUM by United States in support of [1-1] motion To Enforce Administrative Subpoena (dg) [Entry date 11/19/93] |
| 12/10/93 3 | Letter dtd 12/9/93 from Robert Seasonwein to Judge Johnson enclosing a copy of the transcript of Aloyzas Balsy's [sic] sworn statement taken on 11/16/93. (Copy attached). (sy) [Entry date 12/23/93] |

- 1/7/94 4 ANSWER to Petition by Aloyzas Balsys. (sy) [Entry date 01/11/94]
- 1/7/94 5 MEMORANDUM by Aloyzas Balsys in opposition to [1-1] govt's motion To Enforce Administrative Subpoena. (sy) [Entry date 01/11/94]
- 1/7/94 6 APPENDIX 1-24 filed by Aloyzas Balsys. (sy) [Entry date 01/11/94]
- 2/8/94 8 Ivars Berzins' SUPPLEMENTAL AFFIDAVIT regarding newly discovered evidence that supports the respondent's claimed fear of foreign prosecution. (sy)
- 2/17/94 9 REPLY MEMORANDUM OF LAW by United States to Respondent's Supplemental Affidavit regarding [1-1] motion to Enforce Administrative Subpoena. (sy) [Entry date 02/24/94]
- 2/25/94 10 Letter dtd 2/22/94 from Ivars Berzins to Robert Seasonwein requesting a clarification of the Law of the Republic of Lithuania Concerning Responsibility For Genocide of The People of Lithuania. (sy) [Entry date of 03/02/94]
- 3/17/94 11 Letter dtd 3/7/94 from Ivars Berzins to Judge Johnson requesting time to apply to the proper officials in Lithuania for a copy of their genocide law. (sy)

- 4/8/94 12 Letter from Ivars Berzins to Judge Johnson dated April 5, 1994. Enclosing a copy of an English translated version of a letter from the Procurator General of the Republic of Lithuania regarding the "Law On the Responsibility for the Genocide of the Population of Lithuania." (dj) [Entry date 04/13/94]
- 10/11/94 13 Letter dtd 10/5/94 from Ivars Berzins to Judge Johnson enclosing 9/28/94 letter to him from Denise Noonan Slavin and the 9/26/94 Daily Report. (Enclosed). (sy)
- 5/8/95 14 LETTER dated 4/20/95 from Ivars Berzins to Sterling Johnson re: enclosing copy of the Eleventh Circuit's decision in the Gecas case which is relevant to the matter. (mr)
- 11/2/95 15 LETTER dated 9/19/95 from Robert G. Seasonwein to Hon. Judge Johnson enclosed for your consideration is a copy of the U.S. District Court for the District of Massachusetts' recent opinion in U.S. -V- Aleksandras Lileikis, No. 94-11902-RGS (D.C. Ma. September 15, 1995). (dg)
- 3/13/96 16 ORDER granting [1-1] motion to Enforce Administrative Subpoena. For the reasons stated above, the govern-

ment's motion for an order compelling compliance with its administrative subpoena is hereby granted with respect to both the deposition questions the OSI wishes to ask of the respondent and the documents described in the subpoena. (signed by Judge Sterling Johnson Jr. on 3/5/96) c/m (dg)

5/10/96 17 NOTICE OF APPEAL by Aloyzas Balsys. Fee Paid \$ 105.00 Receipt # 183174. Notice of Appeal and certified copy of docket sent appealing [16-1] order. Service made by clerk. (mm) [Entry date 05/20/96]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 96-6144

UNITED STATES OF AMERICA, PETITIONER

v.

ALOYZAS BALSYS

DOCKET ENTRIES

- | | |
|---------|---|
| 5/23/96 | Copy of district court docket entries and notice of appeal on behalf of Appellant Aloyzas Balsys filed. [96-6144] Form C due on 5/20/96. Form D due on 5/20/96. (ag42) |
| 5/23/96 | Appellant Aloyzas Balsys Form C filed, with proof of service. [96-6144] Form C deadline satisfied. (ag42) |
| 5/23/96 | Appellant Aloyzas Balsys Form D filed, with proof of service. [96-6144] Form D deadline satisfied. (ag42) |
| 5/31/96 | Scheduling order #1 filed. Record on appeal due on 6/24/96. Appellant's brief and appendix due on 7/1/96. Appellee's brief due on 7/31/96. Argument as early as week of 8/26/96. (Pre-Argu- |

ment Conference scheduled for 6/14/96 @10:45). [Per SAB] (ag42)

6/3/96 Appellee United States of America motion to dismiss the appeal FILED (w/pfs). [808665-1] [Forwarded to AA] (ag42)

6/3/96 Appellee United States of America Memorandum Of Law SUPPORTING motion to dismiss appeal # [808665-1] by Appellee United States of America filed. [Forwarded to AA] (ag42)

6/10/96 Letter dated 6/5/96 submitted by Robert G. Seasonwein received. Re: Request To Withdraw Motion For Dismissal. [Forwarded to AA] (ag42)

6/14/96 Order FILED WITHDRAWING motion by Appellee United States of America —order endorsed on motion to dismiss the appeal [808665-1]—[Per BJM] (ag42)

6/18/96 Notice of counsel of order dated 6/14/96. (ag42)

6/20/96 New scheduling order number TWO filed. New record on appeal due date is 7/1/96. New appellant's brief due date is 7/8/96. New appellee's brief due date is 8/12/96. New argument week as early as 9/3/96. [Per SAB] (ag42)

6/21/96

6/25/96

6/27/96

7/8/96

7/8/96

8/12/96

8/26/96

9/6/96

9/19/96

Notice of appearance form on behalf of Robert G. Seasonwein, Esq., received. (Orig. to Calendar) (in04)

Record on appeal index in lieu of record filed. (ag42)

Letter dated 6/25/96 submitted by Robert G. Seasonwein received. Re: Copy of Government's Reply Listed on DC Docket Sheet. (ag42)

Appellant Aloyzas Balsys brief FILED with proof of service. (ag42)

Appellant Aloyzas Balsys joint appendix filed w/pfs. Number of volumes: One. (ag42)

Appellee United States of America brief filed with proof of service. [SERVICE EFFECTED BY MAIL ON 8/9/96] (ag42)

Appellant Aloyzas Balsys reply brief filed with proof of service. (ag42)

Proposed for argument the week of 10/21/96 PM PANEL. (ca93)

Set for argument on 10/21/96 PM. [96-6144] (ca93)

10/21/96 Case heard before MESKILL, CALABRESI C.JJ., BLOCK, D.J. (TAPE: #14+15) (ca95)

7/15/97 The district court's order compelling compliance with the government's administrative subpoena is VACATED and REMANDED for proceedings consistent with this opinion; by published signed opinion filed. (Per GC) [96-6144] (ag42)

7/15/97 Judge Block, District Judge, with whom Judge Calabresi joins, concurring in a separate opinion filed. (ag42)

7/15/97 Judge Meskill concurring in the result in a separate opinion filed. (ag42)

7/15/97 Judgment filed. (ag42)

7/23/97 Note: The OPINION PRICE is \$ 9.00 (rek)

8/28/97 Appellee USA Petition for Rehearing and Suggestion for Rehearing In Banc, FILED, [1036172-2] with proof of service filed. (ag41)

9/19/97 Mandate receipt returned from the district court. (reh)

9/19/97 Letter sent to district court recalling mandate. (ag40)

9/25/97 Order FILED DENYING petition for REHEARING [1036172-1] and DENYING petition for rehearing in banc [1036172-2] by Appellee USA, endorsed on motion dated 8/28/97. (BJM) (ag41)

9/25/97 Order FILED DENYING petition for REHEARING [1036172-1] AND DENYING petition for REHEARING IN BANC [1036172-2] by Appellee USA. (ag41)

10/6/97 Judgment MANDATE ISSUED. (ag41)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No.

UNITED STATES OF AMERICA, PETITIONER,
v.
ALOYZAS BALSYS, RESPONDENT

**PETITION TO ENFORCE
ADMINISTRATIVE SUBPOENA**

The United States of America, by the undersigned, avers to this Court as follows:

1. This is a proceeding brought pursuant to Section 235(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1225(a), as amended (hereinafter, "the Act"), to judicially enforce an administrative subpoena.
2. The petitioner is the United States of America.
3. The respondent, Aloyzas Balsys is an alien presently residing at 86-34 91st Street, Woodhaven, New York 11421, within the jurisdiction of this Court. His alien registration number is A12 328 781. Respondent is not a United States citizen.
4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345.
5. Venue is proper pursuant to 8 U.S.C. § 1225(a).
6. The Office of Special Investigations (hereinafter "OSI") was created by the Attorney General pursuant to Order No. 851-79, September 4, 1979, and is, *inter*

alia empowered to investigate the activities of individuals "who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies or other affiliated governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion." Attached hereto as Exhibit A is a copy of that Order. On the same date, the Attorney General issued Order No. 852-79, codified at 28 C.F.R. § 0.55(f). This Order amended the functions of the Criminal Division of the Department of Justice to include:

All litigation arising under the immigration and nationality laws . . . and the passport and visa laws . . . and investigations and other appropriate inquiries pursuant to all the power and authority of the Attorney General to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens as they relate to the individuals identified in 8 U.S.C. 1182(a)(33) and 1251(a)(19).

(emphasis supplied).

7. Pursuant to this mandate from the Attorney General and to the authority contained in Section 1225(a) of the Act and regulations enacted thereunder, specifically 8 C.F.R. § 287.4, OSI is empowered to conduct questioning, to issue subpoenas, and to require the production of pertinent and material books, papers and documents. Moreover, OSI is empowered when necessary to take appropriate legal action to deport, denaturalize or otherwise prosecute an individual who was admitted as an alien into or became a

naturalized citizen of the United States and who assisted the Nazis as aforesaid.

8. OSI is conducting a civil investigation into the immigration of Aloyzas Balsys to the United States as set forth in the Declaration of Robert G. Seasonwein attached hereto as Exhibit B.

9. The respondent, Aloyzas Balsys, is in possession and control of information and documents relevant to the above-described investigation.

10. On October 8, 1993, a subpoena was issued by Neal M. Sher, Director, Office of Special Investigations, directing the respondent, Aloyzas Balsys, to appear before OSI attorney Robert G. Seasonwein, on October 22, 1993, at 10:00 a.m. at the office of the United States Attorney, 1 Pierpont Plaza, Brooklyn, New York 11201 to testify and to produce for examination documents described in the subpoena (Exhibit C). This subpoena was personally served upon respondent on October 14, 1993, by Immigration and Naturalization Service Special Agent Frank J. Cirigione, as evidenced on the Return portion of Exhibit C.

11. At the request of respondent's counsel, the subpoena was continued until November 16, 1993 at 10:00 a.m. in Brooklyn, New York. At that time and place, respondent, accompanied by counsel, appeared and was placed under oath, but failed to testify as to any matters other than his name and address, asserting a privilege under the Fifth Amendment to the Constitution for each and every question posed. Further, while respondent did produce his Alien Registration Card for inspection, he asserted a Fifth Amendment privilege as to the production of any other documents. Neither respondent nor his counsel

would specify the bases for those alleged constitutional privileges.

12. The documents, testimony and other data sought by the subpoena are not already in possession of OSI.

13. All administrative steps required for the issuance of a subpoena have been taken.

14. The subpoena is reasonable in scope and adequately describes the documents to be produced.

15. The testimony and documents sought by the subpoena are relevant and necessary to the OSI's investigation.

16. It is necessary to obtain the testimony and examine the documents and other data sought by the subpoena in order to properly investigate the immigration of Aloyzas Balsys to the United States, as is stated in the Declaration of OSI attorney Robert G. Seasonwein, attached hereto and incorporated herein as part of this petition.

WHEREFORE, the petitioner respectfully prays:

1. That the Court enter an Order directing the respondent, Aloyzas Balsys, to comply with and obey the aforementioned subpoena and each and every requirement thereof by ordering the attendance, testimony, and production of the documents, and other data as is required and called for by the terms of the subpoena before Robert G. Seasonwein or any other proper officer or employee of OSI, at such time and place as may be fixed by Neal M. Sher or any other proper officer or employee of OSI.

2. That the Court order respondent to pay the costs of the United States in maintaining this action.

3. That the Court grant such other and further relief as is just and proper.

DATED: November 16, 1993.

Respectfully submitted,

ZACHARY W. CARTER NEAL M. SHER
 United States Attorney Director
 Eastern District of New
 York

RONNIE L. EDELMAN
 Deputy Director

/s/ ROBERT G. SEASONWEIN
 ROBERT G. SEASONWEIN
 Senior Trial Attorney
 Office of Special Investiga-
 tions
 Criminal Division
 1001 G Street, N.W.,
 Suite 1000
 Washington, D.C. 20530
 (202) 616-2492

[agency seal omitted]

**Office of the Attorney General
 Washington, D.C. 20530**

**TRANSFER OF FUNCTIONS OF THE
 SPECIAL LITIGATION UNIT WITHIN THE
 IMMIGRATION AND NATURALIZATION
 SERVICE OF THE DEPARTMENT OF JUSTICE
 TO THE CRIMINAL DIVISION OF THE
 DEPARTMENT OF JUSTICE**

Order No. 851-79

It is the objective of this transfer to consolidate into a single unit within the Criminal Division all the Department's investigative and litigation activities involving individuals, who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies, and other affiliated governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion.

This order assigns to the Criminal Division within the Department of Justice the primary responsibility for detecting, investigating, and, where appropriate, taking legal action to deport, denaturalize, or prosecute any individual who was admitted as an alien into or became a naturalized citizen of the United States and who had assisted the Nazis by persecuting any person because of race, religion, national origin, or political opinion.

This Order establishes within the Criminal Division an Office of Special Investigations to carry out

the functions described in this Order. Without divesting the Attorney General of any of his powers, privileges, or duties under the immigration and naturalization laws, and except as to the Board of Immigration Appeals, there is delegated to the Assistant Attorney General, Criminal Division, his Deputies, and the Director, Office of Special Investigations, Criminal Division, the authority of the Attorney General to direct the administration of the Office of Special Investigations and to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens as they relate to individuals who allegedly, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with:

1. The Nazi government of Germany,
2. Any government in any area occupied by the military forces of the Nazi government of Germany,
3. Any government established with the assistance or cooperation of the Nazi government of Germany, or
4. Any government which was an ally of the Nazi government of Germany, ordered, incited, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

The Office of Special Investigations shall:

1. Review pending and new allegations that individuals, who prior to and during World War II, under the supervision or in association with the Nazi government of Germany, its allies, and other affiliated governments, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion;

2. Investigate, as appropriate, each allegation to determine whether there is sufficient evidence to file a complaint to revoke citizenship, support a show cause order to deport, or seek an indictment or any other judicial process against any such individuals;
3. Maintain liaison with foreign prosecution, investigation and intelligence offices;
4. Use appropriate Government agency resources and personnel for investigations, guidance, information, and analysis; and
5. Direct and coordinate the investigation, prosecution, and any other legal actions instituted in these cases with the Immigration and Naturalization Service, the Federal Bureau of Investigation, the United States Attorneys Offices, and other relevant Federal agencies.

Date: September 4, 1979

/s/ BENJAMIN R. CIVILETTI
BENJAMIN R. CIVILETTI
Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No.

UNITED STATES OF AMERICA, PETITIONER,

v.

ALOYZAS BALSYS, RESPONDENT

DECLARATION

Robert G. Seasonwein, being duly sworn, declares as follows:

- 1) I am a senior trial attorney in the Office of Special Investigations (OSI), Criminal Division, United States Department of Justice, Washington, D.C., duly appointed according to law and acting as such.
- 2) I am the attorney acting as counsel for the Government in the investigation of the wartime activities and immigration to the United States of Aloyzas Balsys.
- 3) Respondent was born on February 6, 1913 in Ansieniai, Plateliai Province, Lithuania and entered the United States on June 30, 1961 pursuant to section 221 of the Immigration and Naturalization Act (the "Act").
- 4) On May 2, 1961, in connection with his application to enter the United States under the Act, respondent swore that the information contained in his application for Immigrant Visa and Alien Registration was true. During this application process, respondent misrepresented his wartime activities.

5) On May 2, 1961, based on respondent's statements given during the screening and admission process, he was issued the Immigrant Visa under which he entered the United States.

6) OSI has information and evidence that during World War II, respondent assisted the Nazi forces and participated in the persecution of persons because of their race, religion and/or political opinion, which conduct rendered him ineligible for a visa under the Act.

7) In furtherance of the above investigation and in accordance with 8 U.S.C. §1225(a), a subpoena was issued on October 8, 1993, to Aloyzas Balsys to give testimony and to produce documents on October 22, 1993, as described in said subpoena.

8) On October 14, 1993, respondent was personally served with the above described subpoena by Immigration and Naturalization Service Special Agent Frank J. Ciringione, as evidenced by the Return on the bottom portion of the subpoena.

9) On October 21, 1993, at the request of Ivars Berzins, respondent's attorney, the deposition was rescheduled for November 16, 1993.

10) On November 16, 1993, respondent appeared pursuant to the above described administrative subpoena in Brooklyn, New York. Respondent was put under oath and asked questions in English which were then translated into Lithuanian, his native tongue. Respondent testified as to his name and address, but refused to testify in response to all other questions, and, with the exception of producing his Immigrant Registration card for inspection, refused to testify about or produce documents pursuant to

subpoena, asserting alleged constitutional privileges under the Fifth Amendment to the United States Constitution.

11) Despite repeated inquiry and request, neither respondent nor his counsel would state any basis or authority for the alleged constitutional privilege asserted.

12) The documents, testimony and other data sought by the subpoena are not already in possession of OSI.

13) All administrative steps required for the issuance of a subpoena have been taken.

14) It is necessary to obtain the testimony and to examine the documents, and other data sought by the subpoena in order to properly investigate the immigration of Aloyzas Balsys to the United States.

**DECLARATION IN LIEU OF JURAT
(28 U.S.C. 1746)**

I declare under penalty of perjury that the following is true and correct. Executed on this sixteenth day of November 1993.

/s/ ROBERT G. SEASONWEIN
ROBERT G. SEASONWEIN
Senior Trial Attorney
Office of Special Investigations
Criminal Division
1001 G Street, N.W.,
Suite 1000
Washington, D.C. 20530
(202) 616-2492

**United States of America
Department of Justice
Criminal Division
Office of Special Investigations
Subpoena**

Mr. Aloyzas Balsys
TO: 86-34 91st Street
Woodhaven, New York
11421

Date: October 8, 1993

You are hereby commanded to appear before Robert G. Seasonwein, a representative of the United States Department of Justice, Criminal Division, Office of Special Investigations, in the United States Attorney's Office 1 Pierpont Plaza, 11th Floor, Brooklyn, New York 11201.

on the 22nd day of October 1993, at 10:00 o'clock A.M. to give testimony in connection with the investigation of Aloyzas Balsys being conducted under authority of the Immigration and Nationality Act, relating to your residence and activities in Europe (including but not limited to the years 1940-1945), and your subsequent immigration to the United States.

You are further commanded to bring with you the following documents: All documents and photographs (whether originals or copies) in your possession or under your control which concern your date and place of birth, your whereabouts and activities in Europe (including but not limited to 1940-1943), your immi-

gration to and residence in the United States. Notify this office if an interpreter will be needed to assist you in giving testimony and, if so, what foreign language the testimony will be given in.

/s/ NEAL M. SHER
NEAL M. SHER, Director
Office of Special
Investigations
Criminal Division
(202) 616-2492

RETURN

I hereby certify that on the 14th day of October, 1993,

I served the above subpoena on the witness named above by

/s/ FRANK J. CIRINGIONE
FRANK J. CIRINGIONE
(Name)

Special Agent
(Title)

Received by /s/ A. BALSYS
A. BALSYS

**DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA**

APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION

Form Approved.
Budget Bureau No. 47-R150.2.

INSTRUCTIONS: This form must be filled out in DUPLICATE by typewriter, or if by hand in legible block letters. ALL questions must be answered, if applicable. Questions which are not applicable should be so marked. If there is insufficient room on the form, answer on separate sheets, in duplicate using the same numbers as appear on the form. Attach the sheets to the forms. **DO NOT SIGN** this form until instructed to do so by the consular officer. The fee for filing this application for an immigrant visa is \$5.00. The fee should be paid in United States dollars or local currency equivalent or by bank draft, when you appear before the consular officer.

WARNING: Any false statement or concealment of a material fact may result in your permanent exclusion from the United States. Even though you should be admitted to the United States, a fraudulent entry could be ground for your prosecution and/or deportation.

I hereby apply for an immigrant visa and alien registration at the United States CONSULATE at Liverpool, England and state the following facts:

1. My family name is <u>BALYS</u>	My first name is <u>Aloyzas</u>	My middle name is
2. My full name in native alphabet (<i>If other than Roman letters are used</i>) is "not applicable"		
3. Other names I have used or by which I have been known are (<i>If married woman, give maiden name</i>) "none"		
4. The date of my birth is (Day) <u>6.</u> (Month) <u>2.</u> (Year) <u>1913</u>	5. My place of birth is (City or town) LITHUANIA	(Province) Plateliai (Country) Anseniai (village)
6. My age is <u>48</u>	7. My present calling or occupation is Textile Supervisor (Overlooker)	8. My marital status is Married
9. My sex is <input checked="" type="checkbox"/> Male	<input type="checkbox"/> Single (never married)	<input type="checkbox"/> Widowed
	<input type="checkbox"/> Married	<input type="checkbox"/> Divorced
10. My nationality is <u>Lithuanian</u>	Including my present marriage, I have been married <u>One</u> times.	11. My race is <u>White</u>
		12. My ethnic classification is Lithuanian
13. My final address in the United States is 33, Milton Street, Halifax, Yorks, ENGLAND	14. My personal description is (a) Color of hair <u>dark</u> (c) Height <u>5 ft., 9 ins</u> <u>feet</u> <u>inches</u> (b) Color of eyes <u>blue</u> (d) Complexion <u>normal</u>	
15. I have the following visible marks of identification "none"	16. My purpose in going to the United States is to settle down there permanently	
17. I intend to remain in the United States permanently or (Give length of time) Permanently	18. I intend to enter the United States at the port of NEW YORK	
19. I (Do Not) have a ticket to my final destination I do not have a ticket to my final destination	20. (a) I am going to the United States to join the following person (Give name and address and relationship, if any)	
21. My final address in the United States is as in part 20 (a)	(b) I am sponsored by the following person and/or organization (Give address if different from (a)) UNITED LITHUANIAN RELIEF FUND OF AMERICA, INC. 105 Grand St. Brooklyn 11, N.Y.	
22. My personal financial resources are (a) Cash <u>about</u> <u>3200</u> dollars including (c) Real estate (value) "None"	(b) Bank deposits "None"	
THIS FORM MAY BE OBTAINED GRATIS AT CONSULAR OFFICES OF THE UNITED STATES OF AMERICA		

34. United States immigration laws require that all prospective immigrants answer the following questions. This requirement does not imply that you are suspected of being within any of the classes described in these questions. Your answers will assist the consular officer to establish your eligibility fully on a separate sheet of paper which you should attach to this form. Please bear in mind that whatever the nature of your answers to these questions, you are not necessarily ineligible to receive a visa. For example, if you were arrested and/or convicted for a minor offense, and the consular officer is able to establish that such offense was in fact a misdemeanor, your arrest and/or conviction would not necessarily make you ineligible for a visa.

Give the correct answer to the following questions by circling "Yes" or "No"

- | | | |
|---|--------------------------------------|-------------------------------------|
| (1) (a) Have you ever been arrested for, charged with, indicted for, or convicted of, a crime or other offense? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Have you ever been confined in a civilian prison or jail? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) Have you ever been confined in a military prison or jail? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (d) Have you ever been engaged in illicit buying, selling or handling of narcotic drugs? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (e) Have you ever been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? (If so, explain) | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Give the correct answer to the following questions by circling "Yes" or "No" | | |
| (2) (a) Have you ever been placed in an almshouse (poorhouse or charitable institution)? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Are you a pauper, professional beggar or vagrant? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) Are you now afflicted with a physical defect, disease or disability which may affect your ability to earn a living? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (d) Will you be able to support yourself financially in the United States? | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| (3) (a) Have you ever had one or more attacks of insanity? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Are you now or have you ever been afflicted with psychopathic personality, epilepsy, mental defect, fits, fainting spells, convulsions or a nervous breakdown? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) Are you now or have you ever been a narcotic or drug addict or chronic alcoholic? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (d) Have you ever been treated in a hospital, institution or elsewhere for insanity or other mental disorder or for drug or narcotic addiction or alcoholism? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Have you ever had any of the following: | | |
| (A) Tuberculosis in any form? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (B) Leprosy? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (C) Any other dangerous contagious disease? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (4) (a) Are you a polygamist, do you practice polygamy, or do you advocate the practice of polygamy? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Are you or have you ever been a prostitute, procurer, or supported wholly or in part from the proceeds of prostitution? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) Are you going to the United States to engage in an immoral sexual act, in prostitution, or other unlawful commercialized vice? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (5) (a) Have you previously applied for a visa to enter the United States either as an immigrant or as a nonimmigrant? (If answer is Yes, state where and when, whether you applied for a nonimmigrant or an immigrant visa and whether the visa was issued) | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (If the answer to any of the above questions is Yes, submit evidence that the Attorney General has consented to your reappearing for admission into the United States) | | |
| (c) Have you ever been | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (A) arrested and deported from the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (B) voluntarily removed from the United States at United States Government expense as a person who fell into distress? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (C) removed from the United States as an alien enemy? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (D) removed from the United States at Government expense in lieu of deportation? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (If the answer to any of the above questions is Yes, submit evidence that the Attorney General has consented to your reappearing for admission into the United States) | | |
| (6) (a) Have you ever attempted to obtain by fraud or willful misrepresentation a visa or other documentation to enter the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Have you ever obtained by fraud or willful misrepresentation a visa or other documentation to enter the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (7) (a) Are you now or have you ever been ineligible for United States citizenship? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) Have you ever departed from or remained outside of the United States to avoid or evade military service in time of war or national emergency? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) Have you ever registered with a draft board under the selective service laws of the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (8) Can you, if you are over sixteen, read and understand some language or dialect? | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| (9) Have you ever assisted another alien to enter the United States or try to enter the United States in violation of the laws of the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (10) Are you a former exchange visitor who has not resided abroad for two years following your departure from the United States? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (11) Are you now or have you ever been | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (a) an anarchist? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (b) an advocate of opposition to all organized government? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (c) an advocate of Communism? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (d) a member of, or affiliated with, the Communist Party or affiliated organization, an organization advocating Communism or a Communist-dominated or controlled organization or an organization advocating the overthrow by force of all organized government or any other similar organization? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| (If the answer to any of the above questions is Yes, explain, giving date and nature of activities or membership.) | | |

"no one"

DO NOT WRITE BELOW THE FOLLOWING LINE

The consular officer will assist you in answering the following parts 36 and 37

36. I claim to be exempt from ineligibility to receive a visa and exclusion under item In part 34 for the following reason:

37. I claim to be a

RCN preference quote immigrant under the **1471(2)(A)(v)(B)(ii)** quote.

Nonquota immigrant.

My claim is based on the following facts:

I understand that I am required to surrender my visa to the United States Immigration Officer at the place where I apply to enter the United States, and that the possession of a visa does not entitle me to enter the United States if at that time I am found to be inadmissible under the immigration laws.

I understand that any willfully false or misleading statement or willful concealment of a material fact made by me herein may subject me to permanent exclusion from the United States and, if I am admitted to the United States, may subject me to criminal prosecution and/or deportation.

I, the undersigned applicant for a United States immigrant visa, do solemnly swear (or affirm) that all statements which appear in this application have been made by me, including the encircling of items in part 34, and are true and complete to the best of my knowledge and belief. I do further swear (or affirm) that, if admitted into the United States, I will not engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States; in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activities subversive to the national security; in any activity a purpose of which is the opposition to, or the control, or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means; or join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950. I understand all the foregoing statements, having asked for and obtained an explanation on every point which was not clear to me.

G. Fischer C
(Signature of Applicant)

MAY - 2 1961
Subscribed and sworn to before me this day of
SERVICE NO. 2237
TAX REF ID: 2237

Angelle Shanning
(Signature)
Consular Officer

[seal omitted]

U.S. Department of Justice
Criminal Division

Washington, D.C. 20530

December 9, 1993

Honorable Sterling Johnson, Jr.
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Chambers Room S-162
Brooklyn, New York 11201

Re: *United States v. Balsys*, Misc. 93 227(SJ)

Dear Judge Johnson:

Enclosed is a courtesy copy of the transcript of Aloyzas Balsys' sworn statement, taken on November 16, 1993.

Very truly yours,

/s/ ROBERT G. SEASONWEIN
ROBERT G. SEASONWEIN
Senior Trial Attorney
Office of Special Investigations
Criminal Division
1001 G Street, N.W.,
Suite 1000
Washington, D.C. 20530
(202) 616-2492

cc: Ivars Berzins, Esquire
Deborah Zwamy, AUSA, Eastern District of N.Y.

[seal omitted]

U.S. Department of Justice

Washington, D.C. 20530

December 1, 1993

Mr. Sheldon Silverman, Certified Shorthand Reporter

Re: Sworn Interview of Aloyzas Balsys (November 16, 1993)

Dear Mr. Silverman:

The attached page contains corrections of typographical or spelling errors found in the transcript of the referenced sworn interview. Would you please either incorporate those changes into the transcript, or attach the page to the transcript as an errata sheet.

Thank you for your assistance.

Sincerely yours,

/s/

ROBERT G. SEASONWEIN
 Senior Trial Attorney
 Office of Special Investigations
 Criminal Division
 1001 G Street, N.W.,
 Suite 1000
 Washington, D.C. 20530
 (202) 616-2492

U.S. V. ALOYZAS BALSYS, MISC. NO. 93-227

SWORN STATEMENT TAKEN ON
 NOVEMBER 16, 1993
 IN BROOKLYN, NEW YORK

ERRATA SHEET

Page	Line	Correction
4	23	Change "known" to "no"
4	24	Insert after "are", "pending or"
8	20	Change "Villiaus" to "Vilnius"
8	23	Change "is" to "was"
8	23	Change "Villiaus" to "Vilnius"
9	9	Change "Saugjumas" to "Saugumas"
9	17	Change "Villiaus" to "Vilnius"
10	2	Change "Villiaus" to "Vilnius"
10	10	Change "Lukiskiu" to "Lukiskis"
10	14	Change "Villiaus" to "Vilnius"
11	5	Change "Wohltatigskeitsgasse" to "Wohltätigkeitsgasse"
11	18	Change "Villiaus" to "Vilnius"

THE UNITED STATES
DEPARTMENT OF JUSTICE
CRIMINAL DIVISION

RE: SWORN STATEMENT OF ALOYZAS BALSYS

DEPOSITION OF: ALOYZAS BALSYS

TAKEN AT THE
INSTANCE OF: U.S. Department of Justice

DATE: November 16, 1993

TIME: Commenced at 11:30 a.m.
Concluded at 11:45 a.m.

LOCATION: 1 Pierrepont [sic] Plaza
Brooklyn, N.Y. 11201

REPORTED BY: SHELDON SILVERMAN,
CSR, CM
Notary Public in and for the
State of New York

INTERPRETER: Ada Ustjanauskas

Proceedings recorded by mechanical stenography,
transcript produced by CAT. [000056]

[000057]

ALOYZAS BALSYS,

having been duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. SEASONWEIN:

Q Good morning, my name is Robert Seasonwein.
I'm an attorney with the United States Department
of Justice.

As is happening now, so that you can better understand
any questions that I might ask you, I've asked
that an interpreter, Ms. Ustjanauskas be available to
interpret my questions into Lithuanian and your
answers from Lithuanian into English.

Do you understand what Ms. Ustjanauskas said to
you, sir?

A Yes.

Q Thank you.

I've asked you to come here this morning so I can
ask you some questions about your activities in
Europe prior to and during World War II and your
immigration to the United States.

MR. BERZINS: Don't answer that, please.

Q My questions and your answers are being
transcribed by the court reporter sitting to your left.
The court reporter can only transcribe the spoken
word. If I ask you a question, I would appreciate it if
you would answer verbally and not by shrugging your
shoulders or gesturing with your hands.

MR. SEASONWEIN: I would like to have marked as Exhibit 1 and I would like to show you a copy of the subpoena that was issued to you and served upon you.

MR. BERZINS: We will stipulate the subpoena is received.

MR. SEASONWEIN: Is that an accurate copy?

MR. BERZINS: What difference does it make? We're here.

MR. SEASONWEIN: Thank you.

I would also like to note the subpoena initially was returnable on October 22nd, 1993 but was continued in order to accommodate your counsel's schedule.

I would like to mark as Exhibits 2 and 3 a copy of Mr. Berzins' October 22nd letter and my October 26th letter back to him rescheduling the deposition.

(So marked).

Q At any time during this statement, if I ask you a question that you do not understand, please let me know and I will try to clarify it for you.

[000059]

MR. SEASONWEIN: For the record, also, I would like to note Mr. Balsys is represented by Mr. Ivars Berzins, his counsel in this matter. I say good morning, to you sir.

Q Mr. Balsys, would you please state for the record your full name?

A Balsys Aloyzas.

Q What is your present address, Mr. Balsys?

A 86-34 91st Street, Woodhaven, New York, 11421.

Q How long have you lived at the address, sir?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Under what law so you believe you will incriminate yourself?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Are there any criminal actions pending against you in the United States?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q On information and belief, known criminal actions are anticipated by the United States Department of Justice against you, sir. Do you fear prosecution

[000060]

under the laws of a foreign country?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Are you employed, sir?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Do you have a valid passport from a foreign country?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Since 1945 have you traveled to Lithuania?

A I decline to answer on grounds that the answer might tend to incriminate me (English).

Q Since initially coming to this country, have you traveled overseas?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Do you collect Social Security?"

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q What is the general state of your health, Mr. Balsys?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

[000061]

Q Have you ever been known by another name?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q In addition to English and Lithuanian, what other languages do you understand?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

MR. SEASONWEIN: I would like to mark as Government Exhibit 4, copies of the documents contained in this file. I would like to show you and Mr. Berzins copies of this "A" File.

MR. BERZINS: Am I going to get a copy?

MR. SEASONWEIN: You may keep that. The other documents have not been copied. The only things that are marked as part of that exhibit, Mr. Berzins, are the application for immigrant visa. The other documents aren't germane.

(So marked.)

Q I direct your attention to the visa. Is that your photograph on the front of the visa, Mr. Balsys?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q On the photo, Mr. Balsys, is that your signature?

[000062]

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Mr. Balsys, did you arrive in New York for the first time on June 30th, 1961?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Mr. Balsys, at the time that you applied for this visa, did you tell the American consul in Liverpool, England that you are stateless?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q On the application for immigrant visa and alien registration, did you state that you had served in the Lithuanian army from 1934 until November 23rd, 1940?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q On that application, did you tell the American consul in Liverpool, England that between 1940 and October 9th, 1944 you were in hiding from the NKVD and also the chairman of the Plateliai municipality?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q What did you do between October 9th, 1944 and January 19th, '45, Mr. Balsys?

[000063]

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Where were you when the Soviets occupied Lithuania in June of 1940, Mr. Balsys?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Mr. Balsys, what did you do during the Soviet occupation of Lithuania?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Mr. Balsys, where were you in June of 1941 when the Germans occupied Lithuania?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q What did you do during the German occupation of Lithuania?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q When did you join the Villiaus Saugumas?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Who is the commanding officer of the Villiaus Saugumas?

A I decline to answer on the grounds that the [000064]

answer might tend to incriminate me (English).

Q Do you remember Aleksandras Lileikis?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Do you remember Mr. Gimzauskas?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q While you served in the Saugumas, did you work in the Communist and Jews section?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Were you responsible for the arrest and imprisonment of Jews?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q While you served in the Villiaus Saugumas, did you work in the Polish section?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Were you responsible for the arrest and imprisonment of Poles?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q During the time that you served in the [000064]

Villiaus Saugumas, did you work in the investigations section?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Did you turn prisoners over to the Special Detachment?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Did you ever send prisoners to Lukiskiu Prison?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q As a member of the Villiaus Saugumas, what did you do with personal property of Jews that you arrested and sent to prison?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q During 1941, where did you live in Lithuania?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q In 1942, where in Lithuania did you live?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q In 1943 where did you live in Lithuania?

[000066]

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q When did you move to apartment 5 at Wohltatigskeitsgasse 2 in Vilnius?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q When you lived in apartment 5 did your mother live with you and your wife in Vilnius?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Wasn't the apartment seized by the Saugumas from its rightful Jewish owners?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q At the time that you applied to immigrate to the United States, why didn't you tell the U.S. Vice Consul in Liverpool that you had served in the Villiaus Saugumas?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Were you afraid if you told the truth you would not be allowed to immigrate to the U.S.?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

[000067]

Q Weren't you afraid if you were caught telling lies you wouldn't be allowed to immigrate to the United States?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q At the time that you applied for a visa to immigrate to the United States, were all the answers and information that you provided to the Vice Consul true?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Have you brought any documents as requested in the subpoena?

MR. BERZINS: The witness will produce his alien registration card.

MR. SEASONWEIN: When we break we can make a copy of this, I would appreciate it.

MR. BERZINS: I think it's against the law to make copies of these so I don't want to be a participant in that procedure.

MR. SEASONWEIN: I'll bear the risk of that, Mr. Berzins.

Q Mr. Balsys, do you have any other documents that are responsive to the subpoena that you haven't brought with you today?

[000067]

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

Q Mr. Balsys, do you have anything else that you want to tell me today?

A I decline to answer on the grounds that the answer might tend to incriminate me (English).

MR. SEASONWEIN: Mr. Berzins, I have no further questions. If you care to ask your client any questions, feel free.

MR. BERZINS: Thank you, not today.

(Exhibit 5, a copy of alien registration card, marked in evidence.)

MR. SEASONWEIN: I would like to terminate the sworn interview.

(Time noted 11:45.)

CERTIFICATE

[000069]

STATE OF NEW YORK)
) ss.:
 COUNTY OF KINGS)

I, SHELDON SILVERMAN a Notary Public of the State of New York, do hereby certify that the foregoing deposition of ALOYZAS BALSYS was taken before me on April 16, 1993.

The said witness was duly sworn before the commencement of her testimony. The said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said sworn statement.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

Dated: New York, New York April 18, 1993.

/s/ SHELDON SILVERMAN
SHELDON SILVERMAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Misc. 93/227, Johnson, J.

UNITED STATES OF AMERICA, PETITIONER
-against-
ALOYSAS BALSYS, RESPONDENT

ANSWER TO PETITION

Respondent, by his attorney Ivars Berzins, P.C., for his answer to the Petition to Enforce Administrative Subpoena dated November 16, 1993, alleges:

1. Admits paragraphs 1 through 7, 10 and 11.
2. Denies the allegations in paragraphs 9, 14, and 16.
3. Lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 8, 12, 13, and 15.

WHEREFORE, respondent respectfully seeks an order dismissing the petition on the grounds that he has properly invoked his privilege against self-incrimination.

Dated: January 6, 1994

/s/ IVARS BERZINS
IVARS BERZINS, (IB6202)

IVARS BERZINS, P.C.
Attorney for Respondent
484 West Montauk Highway
Babylon, New York 11702
516-661-3540

No. 64

**NAZIS AND NAZI COLLABORATORS
(PUNISHMENT) LAW, 5710-1950***

1. (a) A person who has committed one of the following offences—

- (1) done, during the period of the Nazi régime, in an enemy country, an act constituting a crime against the Jewish people;
- (2) done, during the period of the Nazi régime, in an enemy country, an act constituting a crime against humanity;
- (3) done, during the period of the Second World War, in an enemy country, an act constituting a war crime,

is liable to the death penalty.

(b) In this section—

“crime against the Jewish people” means any of the following acts, committed with intent to destroy the Jewish people in whole or in part:

- (1) killing Jews;
- (2) causing serious bodily or mental harm to Jews;
- (3) placing Jews in living conditions calculated to bring about their physical destruction;

* Passed by the Knesset on the (18th Av, 5710 1st August, 1950) and published in Sefer Ha-Chukkim No. 57 of the 26th Av, 5710 (9th August, 1950) p.281: the Bill and on Explanatory Note were published in Hatsaot Chol: No. 36 of the 11th Adar, 5710 (28th February, 1950).

(3) placing Jews in living conditions calculated to bring about their physical destruction;

(4) imposing measures intended to prevent births among Jews;

(5) forcibly transferring Jewish children to another national or religious group;

(6) destroying or desecrating Jewish religions or cultural assets or values;

(7) inciting to hatred of Jews;

“crime against humanity” means any of the following acts:

murder, extermination, enslavement, starvation or deportation and other inhumane acts committed against any civilian population, and persecution on national, racial, religious or political grounds;

“war crime” means any of the following acts:

murder, ill-treatment or deportation to forced labour or for any other purpose, of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or persons on the seas; killing of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; and devastation not justified by military necessity.

2. If a person, during the period of the Nazi régime, committed in an enemy country an act by which, had he committed it in Israel territory, he would have become guilty of an offence under one of the following

sections of the Criminal Code, and he committed the act against a persecuted person as a persecuted person he shall be guilty of an offence under this Law and be liable to the same punishment to which he would have been liable had he committed the act in Israel territory:

- (a) section 152 (rape, sexual and unnatural offences);
- (b) section 153 (rape by deception);
- (c) section 157 (indecent act with force, etc.);
- (d) section 188 (child stealing);
- (e) section 212 (manslaughter);
- (f) section 214 (murder);
- (g) section 222 (attempt to murder);
- (h) section 235 (acts intended to cause grievous harm or prevent arrests);
- (i) section 236 (preventing escape from wreck);
- (j) section 238 (grievous harm);
- (k) section 240 (maliciously administering poison with intent to harm);
- (l) section 256 (abducting in order to murder);
- (m) section 258 (abducting in order to subject person to grievous hurt);
- (n) section 288 (robbery and attempted robbery);
- (o) section 293 (demanding property with menaces with intent to steal).

3. (a) A person who, during the period of the Nazi régime, in an enemy country, was a member of, or held any post or exercised any function in, an enemy organisation is liable to imprisonment for a term not exceeding seven years.

- (b) In this section, "enemy organisation" means—
 - (1) a body of persons which, under article 9 of the Charter of the International Military Tribunal, annexed to the Four-Power Agreement of the 8th August, 1945, on the trial of the major war criminals, has been declared, by a judgment of that Tribunal, to be a criminal organization;
 - (2) any other body of persons which existed in an enemy country and the object or one of the objects of which was to carry out or assist in carrying out actions of an enemy administration directed against persecuted persons.

4. (a) A person who, during the period of the Nazi régime, in an enemy country and while exercising some function in a place of confinement on behalf of an enemy administration or of the person in charge of that place of confinement, committed in that place of confinement an act against a persecuted person by which, had he committed it in Israel territory, he would have become guilty of an offense under one of the following sections of the Criminal Code, shall be guilty of an offense under this Law and be liable to the same punishment to which he would have been liable had he committed the act in Israel territory:

- (1) section 100(c) (threatening violence);

- (2) section 162 (procuring defilement of females by threats, fraud or administering drugs);
- (3) section 241 (wounding and similar acts);
- (4) section 242 (failure to supply necessities);
- (5) section 249 (common assault);
- (6) section 250 (assault causing actual bodily harm);
- (7) section 261 (unlawful compulsory labour);
- (8) section 270 (theft).

(b) "Place of confinement", in this section, means any place in an enemy country which, by order of an enemy administration, was assigned to persecuted persons, and includes any part of such a place.

5. A person who, during the period of the Nazi régime, in an enemy country, was instrumental in delivering up a persecuted person to an enemy administration, is liable to imprisonment for a term not exceeding ten years.

6. A person who, during the period of the Nazi régime, in an enemy country, received or demanded a benefit —

(a) from a persecuted person under threat of delivering up him or another persecuted person to an enemy administration; or

(b) from a person who had given shelter to a persecuted person, under threat of delivering up him or the persecuted person sheltered by him to an enemy administration.

is liable to imprisonment for a period not exceeding seven years.

7. The provisions of the First Part of the Criminal Code shall, save as this Law otherwise provides, apply to offences under this Law.

8. Sections 16, 17, 18 and 19 of the Criminal Code shall not apply to offenses under this Law.

9. (a) A person who has committed an offence under this Law may be tried in Israel even if he has already been tried abroad, whether before an international tribunal or a tribunal of a foreign state, for the same offense.

(b) If a person is convicted in Israel of an offence under this Law after being convicted of the same act abroad, the Israel court shall, in determining the punishment take into consideration the sentence which he has served abroad.

10. If a persecuted person has done or omitted to do any act, such act or omission constituting an offense under this Law, the Court shall release him from criminal responsibility —

(a) if he did or omitted to do the act in order to save himself from the danger of immediate death threatening him and the court is satisfied that he did his best to avert the consequences of the act or omission; or

(b) if he did or omitted to do the act with intent to avert consequences more serious than those which resulted from the act or omission, and actually averted them;

however, these provisions shall not apply to an act or omission constituting an offence under section 1 or 2(f).

11. In determining the punishment of a person convicted of an offence under this Law, the court may take into account, as grounds for mitigating the punishment, the following circumstances:

- (a) that the person committed the offence under conditions which, but for section 8, would have exempted him from criminal responsibility or constituted a reason for pardoning the offence, and that he did his best to reduce the gravity of the consequences of the offence;
- (b) that the offence was committed with intent to avert, and was indeed calculated to avert, consequences more serious than those which resulted from the offence;

however, in the case of an offence under section 1, the court shall not impose on the offender a lighter punishment than imprisonment for a term of ten years.

12. (a) The rules of prescription laid down in the Fifth Chapter of the Ottoman Code of Criminal Procedure shall not apply to offences under this law.

(b) Repealed

13. The provisions of the General Amnesty Ordinance, 5709-1/m 1949¹, shall not apply to offences under this Law.

14. A prosecution for an offence under this Law may only be instituted by the Attorney General or his representative.

15. (a) In an action for an offence under this Law, the court may deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case.

(b) Whenever the court decides to deviate, under subsection (a), from the rules of evidence, it shall place on record the reasons which prompted its decision.

16. In this Law—

“the period of the Nazi régime” means the period which began on the 3rd Shevat, 5693 (30th January, 1933) and ended on the 25th Iyar, 5705 (8th May, 1945);

“the period of the Second World War” means the period which began on the 17th Elul, 5699 (1st September, 1939) and ended on the 5th Elul, 5705 (14th August, 1945);

“the Allied Powers” means the states which signed the Declaration of the United Nations of the 1st January, 1942, or acceded to it during the period of the Second World War;

“Axis state” means a state which during the whole or part of the period of the Second World War was at war with the Allied Powers: the period which began on the day of the beginning of the state of war between a particular Axis state and the first, in time, of the Allied Powers and ended on the day of the cessation of hostilities between that state and the last, in time, of the

¹ I.R. No. 50 of the 12th Shevat 5709 (11th February, 1949), Suppl. I. p. 173:

Allied Powers, shall be considered as the period of the war between that state and the Allied Powers; "enemy country" means —

- (a) Germany during the period of the Nazi régime;
- (b) any other Axis state during the period of the war between it and the Allied Powers;
- (c) any territory which, during the whole or part of the period of the Nazi regime, was *de facto* under German rule, for the time during which it was *de facto* under German rule as aforesaid;
- (d) any territory which was *de facto* under the rule of any other Axis state during the whole or part of the period of the war between it and the Allied Powers, for the time during which that territory was *de facto* under the rule of that Axis state as aforesaid;

"enemy administration" means the administration which existed in an enemy country;

"persecuted person" means a person belonging to a national, racial, religious or political group which was persecuted by an enemy administration;

"the Criminal Code" means the Criminal Code Ordinance 1935:).

17. The Minister of Justice is charged with the implementation of this Law.

DAVID BEN-GURION

Prime Minister

YOSEF SPRINZAK

Chairman of the Knesset

Acting President of the State

PINCHAS ROSEN

Minister of Justice

April 5, 1994

Hon. Sterling Johnson, Jr.
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, New York 11201

Re: United States of America
 v. Aloyzas Balsys
 Index No. Misc. 93/227

Your Honor:

In response to my March 7, 1994 letter to the Procurator General of the Republic of Lithuania, I have received from him the enclosed letter dated March 23, 1994, and an official English language translation of the "Law On The Responsibility For The Genocide Of The Population Of Lithuania."

Please make this translation of the law part of the record in lieu of the translation that was submitted as respondent's Appendix 7.

Very truly yours,

Ivars Berzins

IB:jj

enc.

Robert G. Seasonwein, Trial Attorney
 United States Department Of Justice
 Office Of Special Investigations
 Criminal Division
 10th & Constitution Avenue, N.w.
 Washington, D.C. 20530

[Official seal]

**PROCURATOR'S GENERAL
 OFFICE OF THE REPUBLIC
 OF LITHUANIA**

A.Smetonos str. 4. Vilnius 2709 LITHUANIA
Tele: 611620 Fax: 611826

23 March, 1994

Mr. Ivars Berzins, P.C.
 Attorney at Law
 484 West Montauk Highway
 Babylon, New York 11702

Dear Sir,

I am happy to fulfill your request and to send you the official translation of the law you requested from Lithuanian into English. Please find it enclosed in the letter.

Your faithfully,

/s/ **ARTURAS PAULAUSKAS**
 ARTURAS PAULAUSKAS
 Prosecutor General

LAW

ON THE RESPONSIBILITY FOR THE GENOCIDE OF THE POPULATION OF LITHUANIA

The Supreme Council of the Republic of Lithuania,
acceding to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the 26 November 1968 Convention on the Non-Application of a Statute of Limitations to Military Crimes and Crimes against Humanity,

recognising the 8 August 1945 Statute of the International Military Tribunal of Nuremberg,

taking into consideration the fact that under the obligations of the aforementioned international agreements, national laws providing for the responsibility for the acts of genocide, crimes against humanity and peace, and for military crimes must be adopted,

stating that the policy of genocide and crimes against humanity with regard to the population of Lithuania was implemented during the periods of occupation and annexation by Nazi Germany and the USSR,

guiding itself by the principle that the extermination of people for whatever purpose is regarded as crime, which principle is universally recognised by the international community,

passes this Law.

Article 1.

Actions aimed at total or partial physical extermination of the population belonging to a certain national, ethnic, racial, or religious group, which found expression in the murder of the members of these

groups, their cruel torture, infliction of heavy bodily injuries on them, or impairment of their mental development; in the deliberate creation of such living conditions which presuppose their total or partial physical extermination; in the forced transfer of children from such groups to other groups, or in the use of measures aimed at forced prevention of child birth in such groups (genocide),-

shall be punishable by imprisonment for the term of 5 to 15 years with the seizure of property, or by death penalty with the seizure of property.

Article 2.

The massacre or torture of unarmed civilians in Lithuania and their deportations carried out in the years of Lithuania's occupation and annexation by Nazi Germany or the USSR qualify as the crime of genocide under the standards of international law.

Article 3.

The law "On the Responsibility for the Genocide of the Population of Lithuania" is an *ex post facto* law, whereas the statute of limitations shall not apply to persons who have committed actions provided for in this Law prior to the coming into effect of this Law.

Article 4.

If death penalty is imposed on persons specified in Article 3 of this Law, the sentence shall be commuted to imprisonment for life under Article 49 of the Criminal Code of the Republic of Lithuania.

Article 5.

In legal cases of crimes specified in Articles 1 and 2 of this Law, interrogation shall be conducted by

investigators of the Procurator's Office of the Republic of Lithuania, and the above cases shall be investigated by the Area Courts of Lithuania.

Article 6.

This Law becomes effective from 15 April 1992.

Vytautas Landsbergis

President

Supreme Council

Republic Of Lithuania

Vilnius

9 April 1992

No. I-2477

[Official seal]